

AWARD NO. 447
Case No. 447

Organization File No. D790707218
Carrier File No. 19-42161

PUBLIC LAW BOARD NO. 7163

PARTIES) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES DIVISION,
TO) INTERNATIONAL BROTHERHOOD OF TEAMSTERS
DISPUTE) CSX TRANSPORTATION, INC.

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

1. The Carrier's discipline [thirty (30) calendar day actual suspension] of Mr. G. Church, by letter dated December 4, 2018, in connection with allegations that he violated CSX Transportation Operating Rule 104.1.3 was arbitrary, capricious, unnecessary and excessive (System File D90707218/ 19-42161 CSX).
2. As a consequence of the violation referred to in Part 1 above, Claimant G. Church:

'... shall be reinstated to service, with all seniority rights restored and all entitlement to, and credit for, benefits restored, including vacation and health insurance benefits.

The Claimant shall be made whole for all financial losses (sic) as a result of the violation, including (but not limited to) compensation for:

- 1) straight time for each regular work day lost and holiday pay for each holiday lost, to be paid at the rate of the position assigned to the Claimant at the time of removal from service (this amount is not reduced by earnings from alternate employment obtained by the Claimant while wrongfully removed from service);
- 2) any general lump sum (sic) payment or retroactive general wage increase provided in any applicable agreement that become effective while the Claimant was out of service.

- 3) overtime pay for lost overtime opportunities based on overtime for any position Claimant could have held during the time Claimant was removed from service, or on overtime paid to any junior employee for work the Claimant could have bid on and performed had the Claimant not been removed from service;
- 4) health, dental and vision care insurance premiums, deductibles and co-pays that he would not have paid had he not been unjustly removed from service;
- 5) all notations of the dismissal should be removed from all Carrier records and the employee personal file.' (Employees' Exhibit 'A-2').

FINDINGS:

The Board, upon consideration of the entire record and all of the evidence, finds that the parties are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated March 20, 2008, this Board has jurisdiction over the dispute involved herein, and that the parties were given due notice of the hearing held.

Following a formal investigation at which he was charged with failing to complete required siding inspections during the week of September 2 through 8, 2018, Claimant was assessed a thirty-day actual suspension. Our review of the record of the investigation establishes that the Carrier had substantial evidence to support its charge against Claimant.

The Organization asks this Board to reverse the discipline on a procedural matter. It asserts the Carrier failed to comply with the time limits established in Rule 25, Section 1(f) of the parties' Agreement, which states:

Notice of discipline must be given within twenty (20) days following the close of the hearing. Copy of the transcript shall be given to the employee and two (2) to his representative.

The Organization states the Carrier did not send a notice of Claimant's discipline or copies of the hearing transcript to the Organization within twenty days following the close of the hearing. The record reflects that the investigation was held on November 20, 2018 and Claimant was sent the discipline notice by Priority Mail on December 4, 2018. The discipline notice, therefore, was sent to Claimant in a timely manner and satisfied the first sentence of the Rule.

We addressed the issue of whether the time limit applies to furnishing the transcript to the Organization in Award No. 371, with the undersigned Neutral Member. We held:

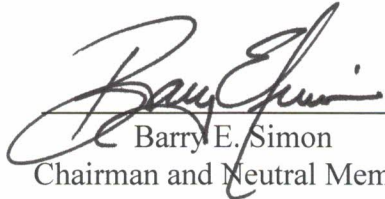
The Organization has objected to the fact that it did not receive a copy of the hearing transcript until three months after the hearing. It further states it never received the exhibits from the hearing. With respect to the latter, the Carrier asserts the exhibits were distributed at the hearing, and copies were given to the Organization at that time. As for the transcript, the Carrier states the Agreement prescribes a time limit for the issuance of a decision, but not for the delivery of the transcript. In the absence of a specific time limit for the transcript, we cannot find that the Agreement has been violated. For the Board to impose a time limit would effectively amend the parties' Agreement, which is beyond our authority. Furthermore, the Organization has not shown that it was prejudiced by the length of time it took for it to receive the transcript. The Board cannot see how it impaired the Organization's right of appeal.

What the Board said in Award No. 371 is equally applicable to this case. We cannot find that the discipline was procedurally defective.


The Organization further asserts that the issuance of a thirty-day actual suspension was excessive, considering the fact that Claimant had forty years of service at the time. We note that Claimant had been disciplined for a vehicular collision in April 2016. This was considered a Serious offense under the Carrier's Individual Development and Personal Accountability Policy (IDPAP), and Claimant waived an investigation, accepting a fifteen-day overhead suspension. The incident in this case, therefore, was Claimant's second Serious offense within a three-year period. The

issuance of a thirty-day actual suspension was consistent with the principle of progressive discipline and the IDPAP effective at the time. We find no basis for modifying it.

AWARD: Claim denied.


Barry E. Simon
Chairman and Neutral Member


David M. Pascarella
Employee Member


John Nilon
Carrier Member

Dated: 8/9/21
Arlington Heights, Illinois